

PATENT COOPERATION TREATY

1280

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

CID 251

To:

F.B. Rice & Co.
139 Rathdowne Street
CARLTON VIC 3053

20 OCT 2003

PCT

WRITTEN OPINION
(PCT Rule 66)

Date of mailing (day/month/year) 16 OCT 2003

Applicant's or agent's file reference
501580

REPLY DUE within **TWO MONTHS**
from the above date of mailing

International Application No.

PCT/AU03/00804

International Filing Date (day/month/year)

26 June 2003

Priority Date (day/month/year)

26 June 2002

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. ⁷ **H04R 25/00, A61N 1/36**

Applicant

COCHLEAR LIMITED et al

* This written opinion is the **first** drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:
26 October 2004

The applicant is hereby **invited to reply** to this opinion:

When? See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established.

If no response is filed by 1 month before the Final Date, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3.
For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.
For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU

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ROBERT BARTRAM

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I. Basis of the opinion

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,
pages , as amended under Article 19,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

WRITTEN OPINION

International application No.

PCT/AU03/00804

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	YES
	Claims 1 to 38	NO
Inventive step (IS)	Claims	YES
	Claims 1 to 38	NO
Industrial applicability (IA)	Claims 1 to 38	YES
	Claims	NO

2. Citations and explanations

D1) US 6157861

D2) US 6002966

Novelty: Claims 1 to 38

The invention defined in claims 1 to 38 is not novel when compared with prior art document D1 that discloses all the essential features of the invention claimed. Refer to the claims and the abstract for particular relevance. This citation discloses a method and programming apparatus that establishes an initial profile across a plurality of channels and automatically adjusts the profiles in the presence of a stimulation signal. The appended claims appear to introduce features that are explicitly disclosed in D1 and hence are also considered to be not novel.

Similarly the invention defined in claims 1, 2, 5, and 6 is not novel when compared with prior art document D2 that discloses all the essential features of the invention claimed. Refer to column 16 line 5 to column 17 line 7 for particular relevance.

Inventive step: claims 1 to 38

Regarding D1 claims 1 to 38 as above.

Regarding D2 claims 1, 2, 5, and 6 as above. Claims 7 to 22, and 25 to 38 are considered to introduce features that are not inventive in light of D2 as they appear to introduce features that are either well known in the art or minor workshop variations to the inventive concept.

Industrial Applicability: Claims 1 to 38

All claims satisfy the industrial applicability criteria in the field of hearing prosthesis.